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MAY 10 2005

Mitchell R. Swartz ScD, MD, EE
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In re:	Mitchell R. Swartz	: Decision on Petition under
Serial No.	09/750,480	: 37 CFR 1.181
Filed :	December 28, 2000	:

For: METHOD AND APPARATUS TO MONITOR LOADING USING VIBRATION

This is in response to the petition filed April 8, 2005 entitled "Petition to the Commissioner Pursuant to 37 C.F.R. 1.181." This petition appears to be a request to transfer the application to a different examining unit.

The Petition is **DENIED**.

On December 7, 2004 a petition decision was mailed to the applicant. In the last few lines of the decision it was stated:

"After mailing of this decision, the application will be returned to the examiner for reconsideration of the application in view of the holdings in this decision. The examiner will make a determination whether to withdraw the finality of the Office action mailed January 13, 2004 or continue with the appeal process with the remaining appealable issues in this application."

On January 11, 2005 a new final rejection was mailed. The first paragraph in the Final rejection stated:

"Consistent with the 12/07/04 Decision by the Director, Patent Technology Center 3600, on Applicant's 2/3/04 Petition on the instant application, the Examiner withdraws the 1/13/04 Final Office Action and replaces it with this Final Office Action. Specifically, the rejection under 35 U.S.C. 112 1st paragraph with respect to new matter and the rejections under 35 U.S.C. 102 and 103 based on the prior as cited in the 1/13/04 Final Office Action are withdrawn."

The applicant alleges that the most current action should have been a response to the Appeal Brief. However, as indicated in the decision, the examiner was directed to either 1.) go forward with the appeal any remaining issues in the case or 2.) withdraw the previous final rejection if a new ground of rejection was to be made in light of the

decision. It is noted that under the old appeal practice an examiner could not make a new ground of rejection in an examiners answer to an appeal brief. Upon review the course of action of the examiner, it has been determined that was proper and as directed by the petition decision.

With respect to the clarity of the record, although it shows that two final rejections have been mailed, the record makes clear that the final rejection mailed on 1/31/04 has been withdrawn in favor of the final rejection mailed on 1/11/05. To assist in directing one to the appropriate rejection, the rejection should be associated with the date it was mailed for clarity. Applicant is not being forced to file a continuation application as applicant may appeal the final rejection of 1/11/05. The appeal fees already of record will be automatically applied to any appeal filed in the instant application.

With respect to applicant's concern over the handling of this application, a review of the entire record fails to reveal any conspiracy or "dirty tricks" of any kind. Referencing the holding of abandonment of 9/9/02, the decision mailed 4/28/03 makes clear that this was merely due to a paper not being timely matched with the application. This is a matter typically handled by Technical Support staff and not the examiner, SPE or Director.

Applicants frustration appears to be arising from the numerous rules and regulations associated with prosecuting a cold-fusion patent application without a patent attorney or agent. Additionally, as indicated by applicant's reference to "Exhibit G", the office has recognized the controversy in this area and has made every effort to ensure each application in this area is treated in a similar equitable manner. As applicant is aware, a patent issued by the United States Patent Office, indicates to the public its acceptance of a particular invention as being operable and having utility as claimed.

A review of the file history does not display any issues that would prevent the applicant from receiving a fair examination of the invention. Nor is there any evidence of any arbitrary or capricious actions on the part of the examiner assigned to examine the application. Therefore applicants request to transfer the application is DENIED. Furthermore, a refund of applicants costs in prosecuting the case before the office is unwarranted.

Any questions or comments with respect to the first mentioned decision should be forwarded to Michael J. Carone in writing. Any question or comments related to the second mentioned decision should be directed to Director, Donald T. Hajec at the number mentioned below.

Donald T. Hajec, Director
Patent Technology Center 3600

Mjc/snm: 5/7/05

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